

UPL Committee Takes on Immigration Consultant Fraud

by Dawn Chase

In Virginia, unqualified immigration consultants — some of whom masquerade as lawyers — defraud immigrants who are trying to live legally in the United States. Fraudulent consultants proliferate in metropolitan areas such as Northern Virginia, with a large immigrant population.

The consultants go by different names, depending on the population they target. In Hispanic communities, for example, some nonlawyers call themselves *notarios*, a designation in their homelands for lawyers with additional credentials.

Some of the victims are applying for green cards — permanent resident status that puts the immigrant on the path to citizenship. Some victims want temporary work-related visas. Some are American citizens who need help getting immigration papers for spouses, children, and other family members. Other victims seek legal services in non-immigration matters, such as traffic offenses or family law. They hire someone who advertises, often in their language, as an expert. Frequently, the victims pay high fees for the service, as they would expect to in their countries of origin.

In order to practice as an advocate before the U.S. Bureau of Citizenship and Immigration Services, its courts, and the U.S. Justice Department's Board of Immigration Appeals (BIA), the advocate must be a lawyer licensed in the United States or a nonlawyer certified by the BIA.

Notarios and other unqualified immigration consultants are neither lawyers nor BIA-certified. In many cases, the service the victim pays for is not accomplished. The victim learns that the consultant is not permitted to advocate for him or her before the federal agencies and courts. One possible conse-

quence — which can happen months or years after the fraud is committed — is deportation, which leaves victims unable to seek a remedy against the consultant.

The Virginia State Bar Unauthorized Practice of Law (UPL) Committee has launched a campaign to warn the public about scams and poor service by notarios and other unqualified immigration consultants.

The committee also is seeking authority from the VSB Council to request legislation to tighten Virginia's UPL laws by increasing the statute of limitations and imposing civil penalties and restitution. Often, the client does not find out about the fraud until the current one-year statute for criminal prosecution has run.

"The UPL Committee has long been frustrated by the difficulties of prosecuting fraudulent consultants under the current UPL statutes," said Sharon D. Nelson, committee chair. "The statute of limitations is too short and the punishment too slight. We are looking to give the fight against UPL real teeth.

"In addition to seeking to amend the law, we have decided to educate immigrant communities in Virginia about how to select a qualified advocate, how to spot someone who is not qualified, and how to complain and take meaningful legal action if someone is victimized."

In the education campaign, VSB-produced brochures, posters, and palm cards will be distributed to churches, community centers, social services agencies, and other places where immigrants might go.

The material, available at <http://www.vsb.org/site/public/immigration-fraud>, offers information on protecting against fraudulent consultants, reporting fraud, and seeking

recovery for victims. The materials are printed in English, Spanish, Korean, and Vietnamese.

Lawyers can help detect unscrupulous immigration consultants by reporting possible UPL or their suspicion that a client was defrauded to the VSB and Federal Trade Commission (see sidebar, page 53).

Solving the Problem

The UPL Committee investigates allegations of unauthorized practice and brings its findings to law enforcement agencies, which occasionally prosecute. To prosecutors, UPL is a low-priority crime; it is a misdemeanor and, in the case of immigration fraud, the victim often has been deported and cannot testify.

An immigration consultant who was prosecuted after a UPL Committee referral was Hans L.H. Gouw, who operated the Chinese Indonesian Society. Gouw was not a lawyer, and his organization was not certified by the BIA. The UPL Committee investigated six complaints about him in 2001 and 2002 and found that he had committed unauthorized practice of law. The U.S. Attorney's Office and federal Department of Homeland Security used the committee's evidence to help close down a major immigration fraud organization and prosecute Gouw and twenty-six others. Gouw was convicted of money laundering and of conspiracy to commit immigration fraud, identification document fraud, and sex trafficking. http://www.justice.gov/usao/vae/Pressreleases/05-MayPDFArchive/05/5305gouw_komalanr.pdf

But many UPL cases are not prosecuted.

Two years ago, Virginia lawyer and consumer law practitioner David A. Zetoony was listening to a radio story about children of legal residents who were living in the United States illegally because their immigration consultant had failed to check a “dependants” box on their parents’ forms. As the story described the difficulty prosecuting such cases, Zetoony had a thought: Why not sue the consultants under state consumer protection statutes, which can result in treble damages and attorney fees?

With the backing of his law firm — Bryan Cave LLP in Washington, D.C. — Zetoony worked pro bono with the American Bar Association and Catholic Charities of the Archdiocese of Washington to develop a civil action strategy and to train immigration attorneys and litigators on how to use state statutes to recover against deceptive immigration consultants. Their first workshops — two in Washington and one on the Internet — trained up to four hundred lawyers, including some from Virginia. The strategy now has been used with success in several states.

In Virginia, Zetoony and Daniel T. O’Connor — also of Bryan Cave — sued Cecilia E. Olazabal-Valencia in Fairfax County Circuit Court for fraud under the Virginia Consumer Protection Act, Va. Code Ann. § 59.1-200. Olazabal-Valencia did business as CKMC Multiservices in Woodbridge, and, as alleged in the complaint, represented herself on her business card as a “specialist in Taxes, Criminal, Family Law, Traffic and Immigration.”

The complaint alleged that Olazabal-Valencia, in exchange for fees, advised the plaintiff on what immigration status to file for, selected the forms, and filled them out for the complainant. The Bureau of Citizenship and Immigration Services ultimately denied the plaintiff’s application for

Immigration Consultant Fraud Resources

Virginia State Bar Website — <http://www.vsb.org/site/public/immigration-fraud>

Here you can find information about immigration consultants, questions to ask, and how to report fraud. You also can download brochures, posters, and palm cards in English, Spanish, Korean, and Vietnamese.

U.S. Bureau of Citizenship and Immigration Service —

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=915c9ddf801b3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=915c9ddf801b3210VgnVCM100000b92ca60aRCRD>

This site provides advice on how to protect yourself from immigration consultant fraud. The website has brochures and posters in English, Chinese, Creole, Polish, and Spanish.

U.S. Justice Department’s Accreditation Roster —

<http://www.justice.gov/eoir/statspub/raroster.htm>

This website has links to lists of agencies and individuals who are accredited to represent people before the Board of Immigration Appeals and the U.S. Department of Homeland Security.

VSF Membership — (804) 775-0530

Call this number to verify that a person is a lawyer in good standing with the Virginia State Bar.

VSF Discipline — <http://www.vsb.org/site/regulation/disciplinary-system-actions/>

Here you can search for an attorney’s record of public discipline. Disciplinary history of an attorney also can be obtained by calling (804) 775-0593.

Virginia Lawyer Referral Service — (800) 552-7977

At this number you can arrange for a one-half-hour consultation with a lawyer in your area, for a fee of \$30. The lawyers are licensed and in good standing with the Virginia State Bar.

VSF Complaint Form — http://www.vsb.org/profguides/upl/upl_form.pdf

If you believe you have been the victim of a person who is practicing law without a license, fill out this form and send it to Ethics Department, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219. You can also order a form by calling (804) 775-0557.

Federal Trade Commission Complaint Form — <https://www.ftccomplaintassistant.gov/>

You can report suspicion of immigration consultant fraud here. You can also call the FTC at (877) FTC-HELP (877-382-4357).

American Bar Association —

http://www.abanet.org/publicserv/immigration/notario/fight_notario_fraud.shtml

At this site, the ABA’s Fight Notario Fraud project helps connect victims of immigration consultant fraud with pro bono lawyers who are willing to represent them. The site includes a referral form:

http://www.abanet.org/publicserv/immigration/notario/referring_probono_case.shtml

protected residency status and employment authorization.

The defendant did not admit liability, but the case settled with the defendant agreeing to a ten-year injunction, during which time she would refrain from calling herself a lawyer or stating that she could give legal advice or provide legal services, from displaying scales of justice on her advertising, and from receiving compensation for “selecting, drafting,

or filing forms on behalf of another.” She also agreed to pay \$3,000. *Reyes v. Olazabal*, Case No. 2009-02006, slip op. (Va. Cir. Ct. [Fairfax] May 22, 2009).

In the same case, the UPL Committee found that Olazabal-Valencia was engaged in unauthorized practice and reached a settlement that included her agreement that she would refrain from any further UPL.

Zetony’s case shares many elements in common with the cases that

routinely come before the UPL Committee.

“The cases we see are very sad,” said committee Chair Nelson. “People will hand over their life savings for a shot at the American dream. ... It’s helpful for lawyers to know how egregious these violations of the law are, and to know how to counsel the victims of immigration fraud.”